

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 124

BY SENATORS CLEMENTS, WELD, AND BALDWIN

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating
 2 to creating a felony offense for subsequent actions of cruelty to animals that cause bodily
 3 injury to, or serious bodily injury or death of, the animal.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Cruelty to animals; penalties; exclusions.

1 (a)(1) It is unlawful for any person to intentionally, knowingly or recklessly,
 2 (A) Mistreat an animal in cruel manner;
 3 (B) Abandon an animal;
 4 (C) Withhold;
 5 (i) Proper sustenance, including food or water;
 6 (ii) Shelter that protects from the elements of weather; or
 7 (iii) Medical treatment, necessary to sustain normal health and fitness or to end the
 8 suffering of any animal;
 9 (D) Abandon an animal to die;
 10 (E) Leave an animal unattended and confined in a motor vehicle when physical injury to
 11 or death of the animal is likely to result;
 12 (F) Ride an animal when it is physically unfit;
 13 (G) Bait or harass an animal for the purpose of making it perform for a person's
 14 amusement;
 15 (H) Cruelly chain or tether an animal; or
 16 (I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or
 17 maltreating any other domesticated animal.
 18 (2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor
 19 and, upon conviction thereof, shall be fined not less than \$300 nor more than \$2,000 or confined
 20 in jail not more than six months, or both fined and confined.

21 (b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or
22 causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal,
23 is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility
24 not less than one nor more than five years and be fined not less than \$1,000 nor more than
25 \$5,000. For the purposes of this subsection, "torture" means an action taken for the primary
26 purpose of inflicting pain.

27 (c) A person, other than a licensed veterinarian or a person acting under the direction or
28 with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to
29 be administered to any animal participating in any contest any controlled substance or any other
30 drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a
31 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
32 \$2,000.

33 (d) Any person convicted of a violation of this section forfeits his or her interest in any
34 animal and all interest in the animal vests in the humane society or county pound of the county in
35 which the conviction was rendered and the person is, in addition to any fine imposed, liable for
36 any costs incurred or to be incurred by the humane society or county pound as a result.

37 (e) For the purpose of this section, the term "controlled substance" has the same meaning
38 ascribed to it by §60A-1-101(d) of this code.

39 (f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or
40 animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game
41 farms if kept and maintained according to usual and accepted standards of livestock, poultry,
42 gaming fowl or wildlife or game farm production and management, nor to humane use of animals
43 or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131, *et seq.*, and
44 the regulations promulgated thereunder, as both statutes and regulations are in effect on the

45 effective date of this section.

46 (g) Notwithstanding the provisions of subsection (a) of this section, any person convicted
47 of a second or subsequent violation of subsection (a) is guilty of a misdemeanor and, shall be
48 confined in jail for a period of not less than ninety days nor more than one year, fined not less
49 than \$500 nor more than \$3,000, or both. The incarceration set forth in this subsection is
50 mandatory unless the provisions of subsection (h) of this section are complied with: Provided,
51 That any person in violation of a second or subsequent conviction of a violation of subdivision (1),
52 or a violation of subdivision (1) of subsection (h) of this section that causes bodily injury to, or
53 serious bodily injury or death of the animal is guilty of a felony and, upon conviction thereof, shall
54 be confined in a state correctional facility not less than one nor more than five years and be fined
55 not less than \$1000 nor more than \$5000. For the purposes of this section, "bodily injury" has the
56 same meaning as in §61-2-29 of this code, and "serious bodily injury" has the same meaning as
57 in §61-2-29 (6) of this code.

58 (h)(1) Notwithstanding any provision of this code to the contrary, no person who has been
59 convicted of a violation of the provisions of subsection (a) or (b) of this section may be granted
60 probation until the defendant has undergone a complete psychiatric or psychological evaluation
61 and the court has reviewed the evaluation. Unless the defendant is determined by the court to be
62 indigent, he or she is responsible for the cost of the evaluation.

63 (2) For any person convicted of a violation of subsection (a) or (b) of this section, the court
64 may, in addition to the penalties provided in this section, impose a requirement that he or she
65 complete a program of anger management intervention for perpetrators of animal cruelty. Unless
66 the defendant is determined by the court to be indigent, he or she is responsible for the cost of
67 the program.

68 (i) In addition to any other penalty which can be imposed for a violation of this section, a

69 court shall prohibit any person so convicted from possessing, owning or residing with any animal
70 or type of animal for a period of five years following entry of a misdemeanor conviction and fifteen
71 years following entry of a felony conviction. A violation under this subsection is a misdemeanor
72 punishable by a fine not exceeding \$2,000 and forfeiture of the animal.

NOTE: The purpose of this bill is to create a felony offense for subsequent actions of cruelty to animals that cause bodily injury to, or serious bodily injury or death of, the animal.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.